

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**CHARLES A. COLYER,** )  
Petitioner/Defendant, )  
vs. ) CIVIL NO. 06-cv-435-JLF  
**UNITED STATES of AMERICA ,** ) CRIMINAL NO. 04-cr-40043  
Respondent/Plaintiff. )

**MEMORANDUM AND ORDER**

**FOREMAN, District Judge:**

This matter is before the Court on Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence (Doc. 1). This motion was filed by Petitioner, *pro se*, and the Government has not filed written responses to this motion. For the reasons set forth below, the motion is denied.

Pursuant to a plea agreement, Petitioner entered a plea of guilty to several counts involving the manufacture and distribution of 500 grams or more of methamphetamine. On September 26, 2005, this Court imposed a sentence of 240 months incarceration, 10 years supervised release, a special assessment of \$100 and a fine of \$875; Petitioner did not appeal his sentence or conviction. On June 6, 2006, he filed the instant motion to challenge various aspects of his sentence; he also challenges the constitutionality of 21 U.S.C. § 841.

Petitioner entered into a plea agreement with the Government in an attempt to benefit himself. In exchange for the benefits he received, Petitioner waived his right to a direct appeal and to a collateral attack under Section 2255. Specifically, the plea agreement provides in relevant part:

The Defendant is aware that Title 18, Title 28 and other provisions of the United States Code afford every defendant limited rights to contest a conviction and/or sentence. Acknowledging all this, and in exchange for the recommendations and concessions made by the

Government in this plea agreement, the Defendant knowingly and voluntarily waives his right to contest any aspect of his conviction and sentence that could be contested under Title 18 or Title 28, or under any other provision of federal law, except that if the sentence imposed is in excess of the Sentencing Guidelines as determined by the Court, the Defendant reserves the right to appeal the reasonableness of the sentence. The Defendant acknowledges that in the event such an appeal is taken, the Government reserves the right to fully and completely defend the sentence imposed, including any and all factual and legal findings supporting the sentence, even if the sentence imposed is more severe than that recommended by the Government. Defendant knowingly and voluntarily waives his right to seek a pardon, whether before or after his release from custody.

Plea agreement at ¶ III, 2 (Case No. 04-40043, Doc. 335).

The Seventh Circuit has held that “a waiver of a right to appeal contained within a guilty plea is enforceable,” provided the waiver is knowing and voluntary. *United States v. Feichtinger*, 105 F.3d 1188, 1190 (7<sup>th</sup> Cir.), *cert. denied*, 117 S.Ct. 2467 (1997); *United States v. Schmidt*, 47 F.3d 188, 190 (7<sup>th</sup> Cir. 1995). *See also United States v. Wenger*, 58 F.3d 280, 281 (7<sup>th</sup> Cir.), *cert. denied*, 116 S.Ct. 349 (1995). Similarly, the Seventh Circuit has found that a waiver of Section 2255 relief in a plea agreement is enforceable, and should be treated no differently than the waiver of a direct appeal. *Jones v. United States*, 167 F.3d 1142, 1145 (7<sup>th</sup> Cir. 1999). Indeed, the Seventh Circuit has specifically stated that both statutory and constitutional rights can be waived in a plea agreement. *Id.* at 1144; *United States v. Woolley*, 123 F.3d 627, 631-32 (7<sup>th</sup> Cir. 1997); *Feichtinger*, 105 F.3d at 1190.

For the waiver to apply, however, Petitioner’s sentence had to be within the maximum provided for in the statute of conviction and the applicable guideline range based upon Petitioner’s relevant conduct. The maximum penalty for manufacture and distribution of methamphetamine is life imprisonment. 21 U.S.C. § 841(a). Based upon the conduct to which Petitioner admitted and

others attributed to him, his applicable range of imprisonment was 20 years to life; Petitioner was sentenced to 240 months (20 years). There is no basis in the record for avoiding this waiver, as the Court neither relied upon constitutionally impermissible factors in sentencing Petitioner nor sentenced him above the statutory maximum.

Because the waiver provisions of a plea agreement are enforceable, Petitioner waived any right to bring this Section 2255. Accordingly, Petitioner's motion pursuant to 28 U.S.C. § 2255 is **DENIED**, and this action is **DISMISSED** with prejudice.

**IT IS SO ORDERED.**

**DATED:** August 15, 2006.

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*s/ James L. Foreman*  
DISTRICT JUDGE